IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2561 OF 2006

Shri Parshuram Prabhakar Uparkar)
aged about 43 years, Occupation)
Business, residing at Kankavali,)
Taluka Kankavli, District)
Sindhudurg. ... ...)... Petitioner.

Versus

1) Shri Tukaram Bhagwan Barde,)
Aged about 39 years,)
Occupation : Agriculturist,)
Residing at Kalane, Taluka)
Dodamarg, Dist.Sindhudurg.)

2) Shri Chandrakant Dattaram)
Gawade, Aged about 40 years,)
Occupation : Agriculturist,)
Residing at Insuli Kondwada,)
Taluka Sawant Wadi, Dist.)
Sindhudurg.)

3) Smt. Pragati Satyavijay Tawade)
Aged about 43 years,)
Occupation : Household,)

Residing at Madkhol, Taluka)
Sawantwadi, Dist.Sindhudurg.)

4) Shri Chandrakant Kashiram)
Gawade, Aged about 45 years,)
Occupation : Agriculturist,)
Residing at Amboli,)
Taluka Sawant Wadi, Dist.)
Sindhudurg.)

5) Smt. Nikhita Nitin Parab,)
Aged about 38 years,)
Occupation : Household,)
Residing at Shiroda (Dewool)
Wadi,Taluka Vengurla, Dist.)
Sindhudurg.)

6) Shri Vishnudas Sajaba Kubal,)
Aged about 42 years,)
Occupation : Agriculturist,)
Residing at Navabag Ubhadanda)
Taluka Vengurla, Dist.)
Sindhudurg.)

7) Shri Vikas Rajaram Gawande,)
Aged about 41 years,)
Occupation : Agriculturist,)
Residing at Mhapan (Teliwadi))
Taluka Vengurla, Dist.)

Sindhudurg.)

8) Shri Kamarand Mahadev Parab,)
Aged about 41 years,)
Occupation : Agriculturist,)
Residing at Mhapan (Teliwadi))
Taluka Vengurla, Dist.)
Sindhudurg.)

9) Shri Vikas Dilip Kudalkar,)
Aged about 33 years,)
Occupation : Agriculturist,)
Residing at Pinguli,)
Taluka Kudal, Dist.)
Sindhudurg.)

10)Smt.Mahananda Ankush Nerurkar)
Aged about 50 years,)
Occupation : Household,)
Residing at Nerur, Taluka)
Kudal, Dist. Sindhudurg.)

11)Smt.Asmita Dattaram Bandekar,)
Aged about 48 years,)
Occupation : Household,)
Residing at Kudal, Taluka)
Kudal, Dist. Sindhudurg.)

12)Shri Anand Narayan Mestri,)
Aged about 42 years,)

Occupation : Agriculturist,)
Residing at Wados, Taluka)
Kudal, Dist. Sindhudurg.)

13)Shri Dinesh Rajaram Salgaonkar)
Aged about 43 years,)
Occupation : Agriculturist,)
Residing at Salgaon, Taluka)
Kudal, Dist. Sindhudurg.)

14)Shri Ashok Vasudev Sawant,)
Aged about 40 years,)
Occupation : Business,)
Residing at Ghumde, Taluka)
Malwan, Dist. Sindhudurg.)

15)Saroj Shivaji Parab,)
Aged about 45 years,)
Occupation : Service,)
Residing at Marde Masure,)
Taluka Malwan,Dist.Sindhudurg)

16)Shri Anant Sakharam Raut,)
Aged about 48 years,)
Occupation : Agriculturist,)
Residing at Niram (Dewoolwadi)
Taluka Malwan,Dist.Sindhudurg)

17)Shri Sandip Ankush Golvankar,)
Aged about 42 years,)

Occupation : Agriculturist,)
Residing at Katta,)
Taluka Malwan,Dist.Sindhudurg)

18)Shri Sadashiv Narayan Mahabhoj)
Aged about 45 years,)
Occupation : Agriculturist,)
Residing at Katta Guramwadi,)
Taluka Malwan,Dist.Sindhudurg)

19)Smt.Sumedha Santosh Patade,)
Aged about 44 years,)
Occupation : Household,)
Residing at Sukalwad,)
Taluka Malwan,Dist.Sindhudurg)

20)Shri Nagesh Ramchandra Morye,)
Aged about 42 years,)
Occupation : Business,)
Residing at Nandgaon, Taluka)
Kankavali, Dist. Sindhudurg.)

21)Smt. Vandana Rajan Khatavkar,)
Aged about 36 years,)
Occupation : Household,)
Residing at Tarale, Taluka)
Kankavali, Dist. Sindhudurg.)

22)Shri Satish Jagannath Sawant,)
Aged about 43 years,)

Occupation : Business,)
Residing at Bhiwande (Bibavne)
Wadi) Taluka Kankavali,)
Dist. Sindhudurg.)
23)Shri Sandesh Shridhar Sawant,)
Aged about 35 years,)
Occupation : Business,)
Residing at Bhirawande,Taluka)
Kankavali, Dist. Sindhudurg.)
24)Smt. Vrushali Vijay Loke,)
Aged about 50 years,)
Occupation : Household,)
Residing at Mithbav,Taluka)
Devgad, Dist. Sindhudurg.)
25)Smt. Vruchita Ravikant Lingayat)
Aged about 38 years,)
Occupation : Household,)
Residing at Udit (Phanasgaon))
Taluka Devgad, Dist.)
Sindhudurg.)
26)Smt. Manisha Harishchandra)
Chindarkar, Aged about 50)
years, Occupation :Household,)
Residing at Sandve, Taluka)
Devgad, Dist. Sindhudurg.)

27)Shri Jayendra Dattaram Raorane)
Aged about 44 years,)
Occupation : Agriculturist,)
Residing at Yedgaon, Taluka)
Vaibhavwadi,Dist. Sindhudurg.)
28)Shri Arun Gangaram Murkar,)
Aged about 50 years,)
Occupation : Agriculturist,)
Residing at Khambalwadi,)
Taluka Vaibhavwadi, Dist.)
Sindhudurg.)
29)The Collector of Sindhudurg,)
Oros, Taluka Kudal, District)
Sindhudurg.)
30)The Chief Executive Officer,)
Zilla Parishad Sindhudurg,)
Oros, Taluka Kudal, District)
Sindhudurg.)
31)The State Election Commission)
32)The State of Maharashtra.)... Respondents.

-: ALONG WITH :-

WRIT PETITION NO. 2799 OF 2006

Shri Shashikant Tukaram Sawant,)
aged about 59 years, Occupation)
Retired, residing at Janavali,)
Taluka Kankavli, District)
Sindhudurg. ... ...)... Petitioner.

Versus

1) Shri Tukaram Bhagwan Barde,)
Aged about 39 years,)
Occupation : Agriculturist,)
Residing at Kalane, Taluka)
Dodamarg, Dist.Sindhudurg.)
2) Shri Chandrakant Dattaram)
Gawade, Aged about 40 years,)
Occupation : Agriculturist,)
Residing at Insuli Kondwada,)
Taluka Sawant Wadi, Dist.)
Sindhudurg.)
3) Smt. Pragati Satyavijay Tawade)
Aged about 43 years,)
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Residing at Madkhol, Taluka)
Sawantwadi, Dist.Sindhudurg.)
4) Shri Chandrakant Kashiram)
Gawade, Aged about 45 years,)
Occupation : Agriculturist,)

Residing at Amboli,)
Taluka Sawant Wadi, Dist.)
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5) Smt. Nikhita Nitin Parab,)
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6) Shri Vishnudas Sajaba Kubal,)
Aged about 42 years,)
Occupation : Agriculturist,)
Residing at Navabag Ubhadanda)
Taluka Vengurla, Dist.)
Sindhudurg.)

7) Shri Vikas Rajaram Gawande,)
Aged about 41 years,)
Occupation : Agriculturist,)
Residing at Mhapan (Teliwadi))
Taluka Vengurla, Dist.)
Sindhudurg.)

8) Shri Kamarand Mahadev Parab,)
Aged about 41 years,)
Occupation : Agriculturist,)
Residing at Mhapan (Teliwadi))

Taluka Vengurla, Dist.)
Sindhudurg.)
9) Shri Vikas Dilip Kudalkar,)
Aged about 33 years,)
Occupation : Agriculturist,)
Residing at Pinguli,)
Taluka Kudal, Dist.)
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10)Smt.Mahananda Ankush Nerurkar)
Aged about 50 years,)
Occupation : Household,)
Residing at Nerur, Taluka)
Kudal, Dist. Sindhudurg.)
11)Smt.Asmita Dattaram Bandekar,)
Aged about 48 years,)
Occupation : Household,)
Residing at Kudal, Taluka)
Kudal, Dist. Sindhudurg.)
12)Shri Anand Narayan Mestri,)
Aged about 42 years,)
Occupation : Agriculturist,)
Residing at Wados, Taluka)
Kudal, Dist. Sindhudurg.)
13)Shri Dinesh Rajaram Salgaonkar)
Aged about 43 years,)

Occupation : Agriculturist,)
Residing at Salgaon, Taluka)
Kudal, Dist. Sindhudurg.)

14)Shri Ashok Vasudev Sawant,)
Aged about 40 years,)
Occupation : Business,)
Residing at Ghumde, Taluka)
Malwan, Dist. Sindhudurg.)

15)Saroj Shivaji Parab,)
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Taluka Malwan,Dist.Sindhudurg)

16)Shri Anant Sakharam Raut,)
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Taluka Malwan,Dist.Sindhudurg)

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20)Shri Nagesh Ramchandra Morye,)
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21)Smt. Vandana Rajan Khatavkar,)
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29)The Collector of Sindhudurg,)
Oros, Taluka Kudal, District)
Sindhudurg.)

30)The Chief Executive Officer,)
Zilla Parishad Sindhudurg,)
Oros, Taluka Kudal, District)
Sindhudurg.)

31)The State Election Commission)

32)The State of Maharashtra.)... Respondents.

Mr. N. V. Walawalkar, Sr. Advocate with
Mr. S. Prabhu for the Petitioners.

Mr. Y. S. Jahagirdar, Sr. Advocate with
Mr.G.S.Godbole and Mr. Nitin Mulay for
Respondent No.14.

Mr. S. R. Nargolkar, AGP for Respondent
Nos.29 and 32.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.

DATED : 28TH APRIL, 2006.

JUDGMENT (Per Kingaonkar, J.):

Rule.

2. Learned Counsel for the Respondents waive service. By consent, Rule made returnable and heard forthwith so as to decide both the petitions at the stage of admission.

3. By these petitions, the Petitioners, who are the District Party President and elected member of Shivsena Party, seek to challenge the order dated 28th March, 2006 passed by Respondent No.29 - Collector giving recognition to group of Respondent Nos.1 to 28 as an independent group called "Swabhimani Sindhudurg Vikas Gat" in Zilla Parishad, Sindhudurg.

4. A brief resume of the facts leading to the present controversy may be stated. Sindhudurg Zilla Parishad Elections were held in January / February, 2002. It appears that Shivsena and Bharatiya Janata Party (BJP) had formed Pre-Poll alliance and contested the said election on symbols of respective parties and as per nomination of their candidates. Respondent Nos.1 to

28 were nominated as candidates of Shivsena Party and were elected. In all, 30 candidates of Shivsena Party were elected in the said Zilla Parishad elections and out of them group of Respondent Nos.1 to 28 is major chunk. The Respondent No.14 - Ashok Sawant submitted an application dated 17th March, 2006 to the Respondent No.29 - Collector for recognition of "Swabhimani Sindhudurg Vikas Gat" comprising of Respondent Nos.1 to 28 as a separate entity in the House of Zilla Parishad. Respondent No.29 - Collector, by passing the impugned order dated 28th March, 2006 (Exh."E"-pg.58) granted the request and recognised them as a separate entity (group) and directed to take entry thereof in the concerned record.

5. The Petitioners' case is that they were not heard by the Respondent No.29 - Collector prior to giving recognition to the separate group, as required under the Maharashtra Local Authority Members Disqualification Rules, 1987 (for short "Disqualification Rules") and hence the impugned order is bad in law. The Respondent Nos.1 to 28 could not be recognised as a separate group unless there is split in the original party i.e. Shivsena. The

Respondent Nos.1 to 28 have filed their requisition for convening a special meeting to consider "No Confidence Motion" against Vice President Shri S. P. Ogle, but they have no legal right to participate in such a meeting inasmuchas they have incurred disqualification by formation of a separate group. The Respondent No.29 ought to have declared that the Respondent Nos. 1 to 28 have incurred disqualification as members of the Zilla Parishad. Though such applications were made by both the Petitioners and they have not yet been heard and decided by Respondent No.29 - Collector on account of political pressure exercised by influential leaders of Congress (I) and, therefore, the impugned order is improper, incorrect and illegal. Consequently, the Petitioners impugn the order dated 28th March, 2006 passed by Respondent No.29 - Collector and also challenge the direction to enter their names in the Form Nos. I and III of the concerned Registers without deciding the question of disqualification incurred by them. Incidentally, the Petitioners are asking for prohibitive injunction against Respondent Nos.1 to 28 restraining them from participating in any manner in the functioning of the Zilla Parishad.

6. We have considered rival submissions of the learned Counsel appearing for the parties. We have gone through the copies of documents filed along with the petitions. The main thrust of the arguments advanced by the learned Counsel, Shri Walawalkar, for the Petitioners, is that the impugned order is bad in law in as much as the group of Respondent Nos.1 to 28 is not formed as a result of a split in the original political party i.e. Shivsena to National level. It is argued further that the impugned order could not have been passed without giving opportunity of hearing to the Petitioners. It is contended that the impugned order is arbitrary since the principles of natural justice have not been followed by Respondent No.29 - Collector. Learned Counsel further pointed out that the Petitioners had immediately objected to giving recognition to the group of Respondent Nos.1 to 28 and yet they were not called upon to explain their stance before passing of the impugned order. Lastly, it is contended that Respondent No.29 - Collector has not yet decided the question of disqualification incurred by Respondent Nos.1 to 28 and has proceeded on long leave to avoid taking of legal decision in the matter. It is urged that Respondent No.29 - Collector may be directed to decide applications of the Petitioners

dated 3rd April, 2006 and 7th April, 2006, respectively, as expeditiously as possible, in accordance with law.

7. Before we proceed to resolve the main controversy, it may be mentioned that in the year 2002 fifty (50) Zilla Parishad Members were elected for Sindhudurg Zilla Parishad. Partywise position was as under :

(i)	Shivsena	30
(ii)	Bharatiya Janata Party	08
(iii)	Indian National Congress (I)	07
(iv)	Nationalist Congress Party	05

As a result of the formation of separate group by Respondent Nos.1 to 28, the elected members of Shivsena remained as 02, and it became a political party with negligible strength in the House. Thus, due to formation of a separate group by the Respondent Nos.1 to 28, there was a sudden change in the strength of Shivsena Party, which dwindled from majority to minority.

19. We have give our anxious consideration to the main contention of learned Counsel for the Petitioners, in the context of interpretation which he seeks to make of Section 4(1) of the Maharashtra Local Authority Members' Disqualification Act, 1986 (for short "Disqualification Act"). The relevant provision may be reproduced for ready reference as below:

> "4.(1) Where a councillor, or as the case may be, a member makes a claim that he and any other member of the municipal party, Zilla Parishad party, or as the case may be, the Panchayat Samiti party constitute the group representing a faction which has arisen as a result of a split in his original political party or aghadi or front and where the total strength of the councillors or, as the case may be, members-
>
> (A) does not exceed twenty and such group consists of one-half, or
>
> (B) exceeds twenty and such group consists of one-third,
>
> of the councillors of such municipal party, Zilla

Parishad party, or as the case may be, the members of such Panchayat Samiti party-

(a) he shall not be disqualified under sub-section (1) of section 3 on the ground-

(i) that he has voluntarily given up membership of his original political party or aghadi or front or:

(ii) that he has voted or abstained from voting in the meeting of such Municipal Corporation, Municipal Council, Zilla Parishad or as the case may be, Panchayat Samiti, contrary to any direction issued by such party or aghadi or front or by any person or authority authorised by any of them in that behalf without obtaining the prior permission of such party, aghadi, front, person or authority and such voting or abstention has not been condoned by such party, aghadi, front, person or authority within fifteen days from the date of such voting or abstention: and

(b) from the time of such split, such faction shall be deemed to be the political party

or aghadi or front to which, he belongs for the purposes of sub-section (1) of Section 3 and to be his original political party or aghadi or front for the purposes of this section."

20. The connotation of expression "a group" representing a faction which has arisen as a result of a split in his "riginal party" cannot be interpreted to refer vertical split of the original party on national level. We are of the opinion that such an interpretation of sub-clause (1) is likely to lead to anomalous position. It will be absurd to expect vertical split of the party on national level for the purpose of giving recognition to a faction which has segregated itself from the original political party at a Zilla Parishad of a District. We cannot ignore intention of the legislature while drafting sub-clause (1) of Section 4 of the Disqualification Act. The State Legislature cannot determine question of disqualification having impact on national level, which will amount to enactment pertaining to extra territorial jurisdiction and may result into anomaly. For example, in one State such a faction may not incur disqualification inspite of split in the original party at national level as per the local law

prevailing in that State yet disqualification may be incurred by similarly placed members of group in another State like Maharashtra. The expression "as a result of split in his original political party" will have to be interpreted in such a way that the sub-clause (1) is made workable. In our considered opinion, this expression in its proper connotion will have to mean as a split in the original political party at the Zilla Parishad level and it cannot be stretched to mean split in the political party at any other level. The expression "original party" will necessarily mean "Zilla Parishad party" in the House of Zilla Parishad, or its Council, as the case may be. We are inclined, therefore, to reject contention of the learned Counsel for Petitioners in this context.

21. On behalf of the Petitioners, a copy of the local newspaper styled "Sindhudurg Times" (pg.19) is relied upon in order to show that prior to 22nd March, 2006 the Respondent Nos.1 to 28 joined hands with Nationalist Congress Party and hence they have been disqualified on account of defection from Shivsena party. It is difficult to appreciate such contention based on some newspaper report. The newspaper report is a hearsay evidence and cannot be relied upon unless

proved by substantive evidence. In case of **Sunil s/o Ramdas Kotkar and others v/s State of Maharashtra and others,** 2005(4) Mhl.L.J. 375, such practice of filing writ petitions with newspaper cuttings is deprecated by a coordinate Bench of this Court. So also it is held that the High Court cannot test political issue while exercising writ jurisdiction under Article 226 of the Constitution of India. We are of the opinion that whether the Respondent Nos.1 to 28 had joined hands-in-glove with any other party prior to formation of the separate groups or any such outside connivance existed, is a question of fact and the same cannot be decided by this Court while exercising the writ jurisdiction. It is well settled that such issues under political thicket cannot be wriggled out and decided while exercising the writ jurisdiction. Hence, we are unable to look into the newspaper reports and express any opinion on the issue of defection from Shivsena party by Respondent Nos.1 to 28.

22. We do not find any substance in the contention that the prior hearing to Petitioner - Parshuram Uparkar was necessary since he is District President of Shivsena Party. It need not be reiterated that he

did not represent largest party in the Zilla Parishad at the relevant time because biggest chunk of the elected members had decided to separate themselves from the remaining 02 members. It cannot be overlooked that Respondent No.14 - Ashok was elected as the leader of the House and hence, if at all, hearing was necessary than it was his right to claim so. Neither Petitioners can have any legal right of hearing in the matters, to the extent it relates to recognition of a separate group called "Swabhimani Sindhudurg Vikas Gat" though they may agitate question of disqualification in relation to members of such group. There is no Rule pointed out to us for application of the principles of natural justice in such a matter. There is hardly any material to show that the Respondent No.29 - Collector acted under political influence and arbitrarily gave recognition to the group of Respondent Nos.1 to 28 as a separate entity in the Zilla Parishad House. Hence, we deem it proper to reject such argument advanced on behalf of the Petitioners.

23. Learned Counsel for the Petitioners invited our attention to provisions of Rule 3(4) of the Disqualification Rules. Sub-clause (4) of Rule 3

reads as under:

> (4) Whenever any change takes place in the information furnished by the leader of a municipal party of a Zilla Parishad party, in relation to a Councillor and by the leader of a Panchayat Samiti party, in relation to a member under sub-rule (1) or by a member under sub-rule (2), he shall as soon as may be thereafter and in any case not later than thirty days from the date on which such change has taken place or within such further period as the Commissioner, or, as the case may be, Collector may for sufficient reason allow, furnish in writing the information with respect to such change to the Commissioner or, as the case may be, Collector."

It is contended that the information has to be furnished by leader of the Zilla Parishad party regarding change and hence without furnishing of such information by the leader of such party, it was improper to allow registration of names of Respondent Nos.1 to 28 in the concerned registers as members of a separate group called "Swabhimani Sindhudurg Vikas Gat". In our opinion the leader of Zilla Parishad

party may be a self-proclaimed leader of a group. Obviously, the action of Respondent No.29 - Collector cannot be branded as illegal because the recognition was given on the basis of the representation made by Respondent No.14 - Ashok Sawant vide letter dated 27th March, 2006 (Exh."C" - pg.19). It is important to note that Respondent No.14 - Ashok was elected as leader of the party in view of the proceedings dated 23rd March, 2006 (pg.20) and hence he was legally competent to furnish information regarding the change.

24. Relying upon certain observations in case of **Mayawati vs. Markandeya Chand and others,** (1998) 7 SCC 517, it is vehemently argued that for recognition to the group of Respondent Nos.1 to 28 as a separate faction, it is necessary to satisfy the following requirements :

(i) A split in the original political party giving rise to a faction.,

(ii) The faction is represented by a group of the elected Zilla Parishad members in the House.,

(ii) Such group consists of not less than one

third of the members of the legislature party to which they belong.

The Apex Court has observed :

> "For the purpose of that para, *(para 3 of the Tenth Schedule),* all the three conditions must be fulfilled. It is not sufficient if more than 1/3rd members of a legislature party form a separate group and give to themselves a different name without there being a split in the original political party. Thus the factum of split in the original party and the number of members in the "group" exceeding 1/3rd of the members of the legislature party are the conditions to be proved."

As stated hereinbefore the connotation "original party" means "Zilla Parishad Party" under the Local Laws. In the present case, there is a split in the original political party, namely, Shivsena party in Zilla Parishad which gave rise to separation of a group and hence faction of the Respondent Nos.1 to 28 came into existence. This faction is represented in the House of Zilla Parishad and Respondent No.14 their

leader. They formed more than 1/3rd of the total number of election members in the Zilla Parishad. We do not find that the authority in case of Mayawati *(supra)* is of any assistance to the case in hand. On the other hand, it has been observed:

> "When the Tenth Schedule has expressly constituted the Speaker or the Chairman as the case may be to decide the question of disqualification and attach finality thereto, it is not for this Court to consider the facts and decide the said question by substituting itself in the place of the Speaker. If the order of the Speaker is set aside on any of the grounds mentioned in the *Hollohan* by exercising the power of limited judicial review, the consequential course to be adopted is to leave the matter to the Speaker to decide afresh in accordance with law.

25. Considering above observations of the Supreme Court of India, we are of the opinion that the question of disqualification ought to be left open for decision of the Respondent No.29 - Collector. The grievance of the Petitioners is that their

applications are not being decided by the Respondent No.29-Collector though early decision is expected under the Disqualification Act, we deem it proper to direct the Respondent No.29 - Collector to decide the applications submitted by the Petitioners regarding question of disqualification of Respondent Nos.1 to 28 within a period of six weeks from the date of receipt of this order. However, we do not find any merit in the either writ petition in so far as they relate to challenge pertaining to the question of recognition of group of Respondent Nos.1 to 28 as a separate group in the House of Zilla Parishad.

26. Consequently, both the petitions are dismissed. The Respondent No.29 - Collector is, however, directed to decide the representations made by the Petitioners on 3rd April, 2006 and 7th April, 2006 respectively, as regards the question of disqualification incurred by Respondent Nos.1 to 28 on account of formation of a separate group within a period of six weeks from the date of receipt of this order. Rule discharged. There shall be no order as to costs.

Sd/-

(V.G. PALSHIKAR,J)

Sd/-

(**V.R.KINGAONKAR,J)**